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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

MI

APR 14 2004

FILE:

Office: Nebraska Service Center

Date:

IN RE:

Applicant:

PETITION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter will be remanded for further action.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

On June 24, 2003, the director denied the application filed on March 24, 2003, after determining that the applicant had failed to establish that she was eligible for filing after the initial registration period from March 9, 2001 to September 29, 2002. The applicant filed her first application on March 24, 2003.

On appeal, counsel claims that the applicant's case was erroneously denied.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state as designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
 - (3) Eligibility for late initial registration in a currently designated foreign state shall also continue until January 15, 1989, for any applicant who

would have been eligible to apply previously if paragraph (f)(2) of this section as revised had been in effect before November 16, 1988.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

Continuously physically present means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Continuously resided means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Brief, casual, and innocent absence means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

On April 14, 2003, the applicant was provided the opportunity to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her nationality and identity. The applicant failed to respond to the notice. Therefore, the director denied the application.

On appeal, counsel asserts that the applicant's "appeal was erroneously denied for having arrived late." According to the counsel, the notice was dated April 14, 2003 on the top and the apparent actual date of mailing, May 9, 2003, was stamped at the bottom of the first page. Counsel contends that the notice was received on May 12, 2003, and it was impossible to respond within thirty days from the April 14, 2003 date. Counsel states that she is providing the same response she sent in reply to the Notice of Intent to Deny.

Counsel incorrectly categorizes her response to the notice of intent to deny as an appeal. However, the application was not denied because the response to the notice was late. As the director stated, "Service records show you failed to respond to the Service's Intent to Deny. Therefore, you failed to show that you qualify for late registration, and you did not submit a copy of your birth certificate or passport. Your case must be denied as a matter of law." Thus, the application was denied because neither counsel nor the applicant established the applicant's eligibility for TPS.

On appeal, counsel provides documents to support the applicant's claim for eligibility. Specifically, photocopies of a Minnesota identification card and a copy of a birth certificate, with English translation, were furnished. As a result, the applicant did furnish the proof of nationality as requested.

It is noted that counsel requested, in conjunction with the filing of the March 24, 2003 application, that the application be accepted as a late registration for TPS. According to counsel, the applicant submitted her first application in April 2001. Counsel further stated that she received a notice from the Nebraska Service Center, indicating the application was denied on December 31, 2001. Counsel asserted that the applicant filed a second application on July 16, 2002, which was rejected because it did not include all of the required fees. Counsel stated that the corrected fees were returned to Citizenship and Immigration Services (CIS) on or about August 15, 2002. Counsel stated that because the applicant never received a denial of this second application, the attached application should be accepted as a late registration.

There is nothing in this record to establish that any application was filed before the March 24, 2003, filing. However, the record also does not reflect the director's acknowledgement or review of any other of the applicant's other files or records before a decision was rendered on the current application. Therefore, the director's decision is withdrawn and the case will be remanded. The director shall review all CIS records pertaining to this applicant and all files relating to this individual's TPS application history shall be consolidated into the record of proceedings. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS. As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The matter is remanded for further action.